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 11 BURBANK POLICE DEPARTMENT,
 12 BURBANK POLICE OFFICERS ADAM
 13 BAUMGARTEN AND MICHAEL EDWARDS

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

14 PRESTON SMITH, an individual;

15 Plaintiff,

16 v.

17 CITY OF BURBANK, BURBANK)
 18 POLICE DEPARTMENT, BURBANK)
 19 POLICE DEPARTMENT OFFICER)
 20 GUNN; BURBANK POLICE)
 21 DEPARTMENT OFFICER)
 22 BAUMGARTEN; BURBANK)
 23 POLICE DEPARTMENT OFFICER)
 24 EDWARDS; AND DOES 1)
 25 THROUGH 100, INCLUSIVE)

26 Defendant.

Case No. **CV10-8840** ^{VBF} _(AGRY)

) **DECLARATION OF CAROL A.**
) **HUMISTON IN SUPPORT OF**
) **NOTICE OF REMOVAL**

1 I, Carol Ann Humiston, declare that:

2 1. I am an attorney at law duly license to practice in the United States District
3 Court, Central District of California, and I am the Senior Assistant City Attorney
4 for the City of Burbank.

5 2. The facts stated herein are personally known to me and I have first-hand
6 knowledge thereof. If called upon to do so, I would and could competently testify
7 hereto under oath.

8 3. On or about September 22, 2010, an action was commenced against
9 Defendants City of Burbank, Burbank Police Department, Burbank Police
10 Department Officers Neil Gunn, Jr., Adam Baumgarten and Michael Edwards, in
11 the Superior Court of the State of California in and for the County of Los Angeles,
12 entitled *Preston Smith v. City of Burbank, Burbank Police Department, et al*, Case
13 No. BC446016. The Complaint was filed on September 22, 2010. The Complaint
14 was served on the City of Burbank and Burbank Police Department on October 18,
15 2010, and was served on Officers Gunn, Baumgarten and Edwards on October 21,
16 2010.

17 4. In the Complaint, plaintiff Preston Smith alleges a Civil Rights Violation, 42
18 U.S.C. section 1983, among other claims.

19 5. This action is a civil proceeding over which this Court has federal question
20 jurisdiction, pursuant to 28 USC Section 1441 (b). Both the title of the Complaint
21 and paragraphs 8 and 11 of the Complaint purport to allege a cause of action under
22 Title 42 USC section 1983.

23 6. No other defendants have been named other than the City of Burbank ,
24 Burbank Police Department, Officers Neil Gunn, Jr., Adam Baumgarten, and
25 Michael Edwards.

26 7. The City of Burbank has retained Dennis Gonzales, Esq. to represent
27 Burbank Police Officer Neil Gunn, Jr. I have spoken to Dennis Gonzales, and he
28 has confirmed that he, on behalf of Officer Neil Gunn, Jr., joins in this removal.

1 8. A true and correct copy of the Notice of Removal is being filed this date
2 with the clerk of the Superior Court of the State of California in and for the County
3 of Los Angeles and served this date upon the plaintiff as required by 28 USC
4 Section 1446 (d).

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct. This declaration was executed on
7 November 17, 2010, at Burbank, California.

8
9 By 

CAROL A. HUMISTON

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. 1013a(3) Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), **Declaration of Carol A. Humiston in Support of Notice of Removal** by method indicated below, on the party in this action:

Manuel H. Miller
Max. A. Sauler
Law Offices of Manuel H. Miller, APC
20750 Ventura Blvd., Suite 440
Woodland Hills, CA 91364

Dennis M. Gonzales
Lawrence Beach Allen & Choi, PC
100 West Broadway, Suite 1200
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

By placing ☐ the original / ☒ a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed as per the attached service list, for collection and mailings at the City of Burbank in Burbank, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

☐ **BY ELECTRONIC SERVICE
(via electronic filing service provider)**

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at www.fileandserve.lexisnexis.com pursuant to the Court's _____ Order mandating electronic service. See Cal.R.Ct.R. 2053, 2055, 2060. The transmission was reported as complete and without error.

☐ **BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as per the above service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

☐ **BY ELECTRONIC SERVICE
(to individual person)**

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

☐ **BY PERSONAL SERVICE**

☐ By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.
☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

☐ **BY FACSIMILE**

By transmitting the document(s) listed above from City of Burbank-City Attorney's Office in Burbank, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

☐ **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL** I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA

Lusine Arutyunyan
Type or Print Name


Signature